



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R09-OAR-2015-0087; FRL-9923-02-Region 9]**

**Revision of Air Quality Implementation Plan; California; South Coast Air Quality Management District; Stationary Source Permits**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a revision to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP) that pertains to SCAQMD Rule 1325: Federal PM<sub>2.5</sub> New Source Review Program, submitted on December 29, 2014. SCAQMD adopted Rule 1325 to meet the Clean Air Act (CAA) part D requirements for emissions of PM<sub>2.5</sub> from stationary sources.

**DATES:** Written comments must be received on or before **[Insert date 30 days after publication in the Federal Register]**.

**ADDRESSES:** Submit comments, identified by docket number EPA-R09-OAR-2015-0087, by one of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>.

Follow the on-line instructions.

2. *E-mail:* [R9airpermits@epa.gov](mailto:R9airpermits@epa.gov)

3. *Mail or deliver:* Gerardo Rios (AIR-3), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901. Deliveries are only accepted during the Regional Office's normal hours of operation.

*Instructions:* All comments will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through <http://www.regulations.gov> or e-mail. [www.regulations.gov](http://www.regulations.gov) is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

*Docket:* EPA has established a docket for this action under EPA-R09-OAR-2015-0087. Generally, documents in the docket for this action are available electronically at <http://www.regulations.gov> and in hard copy at EPA Region IX, 75

Hawthorne Street, San Francisco, California. While all documents in the docket are generally listed at <http://www.regulations.gov>, some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section below.

**FOR FURTHER INFORMATION CONTACT:** La Weeda Ward, by phone: (213) 244-1812 or by email at [ward.laweeda@epa.gov](mailto:ward.laweeda@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, the terms "we," "us," and "our" refer to EPA.

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## I. The State's Submittal

### A. What rule did the State submit?

Table 1 lists the rule addressed by this proposal with the date that it was adopted by the local air agency and submitted by CARB.

**Table 1 Submitted Rule**

Local Agency	Rule #	Rule Title	Adopted /amended	Submitted
SCAQMD	1325	Federal PM <sub>2.5</sub> New Source Review Program	12/05/14	12/29/14

On December 29, 2014, CARB submitted an amended rule, SCAQMD Rule 1325: *Federal PM<sub>2.5</sub> New Source Review Program* to EPA for approval as a revision to the SCAQMD portion of the California SIP.

On January 30, 2015, CARB's December 29, 2014 submittal of Rule 1325 was deemed to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review. The submittal includes evidence of public notice and adoption of the regulation. Our technical support document (TSD) provides additional background information on our evaluation of Rule 1325.

### B. What is the purpose of the submitted rule?

SCAQMD Rule 1325 addresses Nonattainment New Source Review (NNSR) permit requirements for major sources of PM<sub>2.5</sub>. The NNSR requirements under part D of the CAA apply to "major stationary

sources" and "major modifications" as those terms are defined in 40 CFR Part 51.165(a)(1)(iv) and (v). The purpose of this proposed rulemaking is to present our evaluation under the CAA and EPA's regulations. We provide our reasoning in general terms below but provide a more detailed analysis in our TSD, which is available in the docket for this proposed rulemaking.

## **II. EPA's Evaluation**

### **A. What is the background for today's proposal?**

Part D of title I of the Act contains the requirements for areas designated "nonattainment" for any of the national ambient air quality standards (NAAQS). Part D requires pre-construction permit programs for certain new or modified stationary sources located in nonattainment areas. 42 U.S.C. 7502(c)(5).

On July 18, 1997, EPA established 24-hour and annual NAAQS for PM<sub>2.5</sub> (62 FR 38652). On January 5, 2005 (70 FR 944), EPA designated portions of the South Coast Air Basin as nonattainment for the 1997 24-hour and annual PM<sub>2.5</sub> standards (40 CFR 81.305). On December 9, 2014, EPA proposed to find that the South Coast Air Basin had attained the 1997 24-hour and annual PM<sub>2.5</sub> NAAQS (79 FR 72999).

EPA has revised the NAAQS for PM<sub>2.5</sub> on two occasions since the 1997 promulgation. On October 17, 2006, the 24-hour PM<sub>2.5</sub> primary standard was strengthened (71 FR 61144) and on January 15, 2013, the annual primary standard for PM<sub>2.5</sub> was strengthened (78 FR

3086). On November 13, 2009, EPA designated the South Coast Air Basin as nonattainment for the 2006 24-hour  $PM_{2.5}$  standard (74 FR 58688). On February 13, 2013, SCAQMD submitted a plan to provide for attainment of the 2006 24-hour  $PM_{2.5}$  standard in the South Coast Air Basin.

Following promulgation of the  $PM_{2.5}$  standards, EPA issued two guidance documents pertaining to the regulation of  $PM_{2.5}$  emissions. The first document issued in 1997 (Seitz Memo) stated that sources were allowed to use implementation of a  $PM_{10}$  permit program as a surrogate for meeting  $PM_{2.5}$  PSD requirements until certain technical difficulties were resolved, primarily the lack of necessary tools to calculate the emissions of  $PM_{2.5}$  and related precursors, the lack of adequate modeling techniques to project ambient impacts, and the lack of  $PM_{2.5}$  monitoring sites.<sup>1</sup> The second document (Page Memo) was issued in 2005 on the same date that the 1997  $PM_{2.5}$  designations became effective and provided guidance on the implementation of the NNSR provisions in  $PM_{2.5}$  nonattainment areas for an interim period between the effective date of the designations (April 5, 2005) and the promulgation date of final NNSR regulations.<sup>2</sup> As reflected in the

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<sup>1</sup>United States Environmental Protection Agency Memorandum from John S. Seitz, Director Office of Air Quality Planning & Standards, Director to Regional Air Division Directors, "Interim Implementation of New Source Review Requirements for  $PM_{2.5}$ ," October 23, 1997.

<sup>2</sup>United States Environmental Protection Agency Memorandum from Stephen D. Page, Director to Regional Air Division Directors, "Implementation of New Source Review Requirements in  $PM_{2.5}$  Nonattainment Areas," April 5, 2005.

Page Memo, States were allowed to use their existing PM<sub>10</sub> NNSR program as a surrogate to address the requirements of a NNSR program for PM<sub>2.5</sub>. Therefore, districts such as the SCAQMD, which have a SIP approved NNSR program for PM<sub>10</sub>, were not required to submit a NNSR rule for emissions of PM<sub>2.5</sub> at that time.

On May 16, 2008, EPA published its final rule pertaining to PM<sub>2.5</sub> implementation requirements entitled "Implementation of New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM<sub>2.5</sub>)" (the 2008 NSR PM<sub>2.5</sub> Rule),<sup>3</sup> which promulgated NSR requirements for implementation of PM<sub>2.5</sub> in both nonattainment areas (NNSR) and attainment/unclassifiable areas (PSD). With respect to NNSR, this 2008 final rule established the major source threshold, significant emissions rate, offset ratios for PM<sub>2.5</sub>, interpollutant offset trading requirements, and applicability of NNSR to PM<sub>2.5</sub> precursors. Promulgation of the 2008 PM<sub>2.5</sub> NNSR Rule ended application of the PM<sub>10</sub> surrogacy policy under the Page Memo for NNSR permitting. Because it takes time for a local permitting agency to revise its rules to include all of the new NNSR program requirements, EPA's regulations provide in 40 CFR 52.24(k) that the Emission Offset Interpretative Ruling, contained in 40 CFR part 51, Appendix S shall govern applications for permits to construct and operate

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<sup>3</sup> 73 FR 28321 (May 16, 2008).

during the period between the date of designation as nonattainment and the date a NNSR permitting program meeting the requirements of part D of the CAA is approved into the SIP.<sup>4</sup> The 2008 NSR PM<sub>2.5</sub> Rule therefore codified revisions to Appendix S for states that lacked a NNSR program covering PM<sub>2.5</sub>. Therefore, new and modified major sources of PM<sub>2.5</sub> emissions locating in SCAQMD are subject to the provisions of Appendix S until our final approval of Rule 1325, which SCAQMD adopted to implement the requirements of EPA's 2008 PM<sub>2.5</sub> NSR implementation rule. Once approved into the SIP, Rule 1325 will replace the current Appendix S PM<sub>2.5</sub> New Source Review requirements.

On January 4, 2013, the U.S. Court of Appeals for the District of Columbia Circuit, in *Natural Resources Defense Council v. EPA*<sup>5</sup>, issued a decision that remanded the EPA's 2007 and 2008 rules implementing the 1997 PM<sub>2.5</sub> NAAQS. The court found that EPA erred in implementing the PM<sub>2.5</sub> NAAQS in these rules solely pursuant to the general implementation provisions of subpart 1 of part D of title I of the CAA, rather than pursuant to the additional implementation provisions specific to particulate matter nonattainment areas in subpart 4. The court ordered the EPA to "repromulgate these rules pursuant to Subpart 4 consistent with this opinion." 706 F.3d 428, 437. On June 2,

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<sup>4</sup> 73 FR at 28321.

<sup>5</sup> 706 F.3d 428 (D.C. Cir. 2013).



2014, EPA finalized a rule that provides a response, in part, to the *NRDC v. EPA* remand.<sup>6</sup> The rule initially classifies all nonattainment areas as moderate and sets a deadline of December 31, 2014, for states to submit "remaining required SIP submissions for [nonattainment] areas, pursuant to and considering the application of subpart 4". Under subpart 4, the only additional requirement for a NNSR program is to ensure all control requirements applicable to PM<sub>2.5</sub> major sources also apply to PM<sub>2.5</sub> precursors, except where the Administrator determines that such sources do not contribute significantly to PM<sub>2.5</sub> levels which exceed the standard in the area. (CAA section 189(e))

The SCAQMD's current NNSR program for emissions of pollutants other than PM<sub>2.5</sub> regulates new and modified stationary sources of emissions through a series of rules in its Regulation XIII. The rules contained in Regulation XIII prescribe pre-construction review requirements for new and modified facilities, to ensure that the facility operations do not interfere with progress towards attaining ambient air quality standards. With the adoption of Rule 1325, SCAQMD provides a rule intended to specifically regulate PM<sub>2.5</sub> emissions in accordance with requirements of 40 CFR 51.165 and the CAA.

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<sup>6</sup> Identification of Nonattainment Classification and Deadlines for Submission of State Implementation Plan (SIP) Provisions for the 1997 Fine Particle (PM<sub>2.5</sub>) National Ambient Air Quality Standard (NAAQS) and 2006 PM<sub>2.5</sub> NAAQS; 79 FR 31566, June 2, 2014.

B. How is EPA evaluating the rule?

EPA reviewed Rule 1325: Federal PM<sub>2.5</sub> New Source Review Program for compliance with: (1) the CAA requirements for SIPs in general as set forth in CAA section 110(a)(2); (2) the requirements related to SIP revisions in CAA sections 110(l)<sup>7</sup> and 193; (3) the requirements for stationary source preconstruction permitting programs in CAA section 173(a) through (c) of subpart 1 and section 189 of subpart 4; (4) requirements related to the review and modification of major sources in 40 CFR part 51.165.

C. Does the rule meet the evaluation criteria?

With respect to procedural requirements, CAA sections 110(a)(2) and 110(l) require that revisions to a SIP be adopted by the State after reasonable notice and public hearing. EPA has promulgated specific procedural requirements for SIP revisions in 40 CFR part 51, subpart V. These requirements include publication of notices, by prominent advertisement in the relevant geographic area, a public hearing or notice of an opportunity for a public hearing on the proposed revisions, and a public comment period of at least 30 days.

Based on our review of the public process documentation included in the December 29, 2014 submittal, we find that SCAQMD

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<sup>7</sup> CAA section 110(l) requires SIP revisions to be subject to reasonable notice and public hearing prior to adoption and submittal by States to EPA and prohibits EPA from approving any SIP revision that would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA.

has provided sufficient evidence of public notice and opportunity for comment and a public hearing prior to adoption and submittal of these rules to EPA.

For Section 193 of the Act, which was added by the Clean Air Act Amendments of 1990, that provision includes a savings clause providing in pertinent part: "No control requirement in effect, or required to be adopted by an order, settlement agreement, or plan in effect before November 15, 1990, in any area which is a nonattainment area for any air pollutant may be modified after November 15, 1990, in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant." Since  $PM_{2.5}$  is a new NAAQS, there are no existing  $PM_{2.5}$  control requirements that would be subject to the provisions of Section 193 of the CAA. Therefore, for the purposes of our analysis of Rule 1325, we find that Section 193 of the CAA does not apply to this action.

Rule 1325 includes revisions to SCAQMD's NNSR program consistent with CAA sections 173 and 189, and 40 CFR 51.165. Specifically, Rule 1325 includes the  $PM_{2.5}$  emission rates that define major source and major modification thresholds, regulation of direct  $PM_{2.5}$  and certain  $PM_{2.5}$  precursors ( $SO_2$  and  $NO_x$ ), and the emissions offset requirements.

CAA subpart 4 includes section 189(e), which requires the control of major stationary sources of  $PM_{10}$  precursors (and hence

under the court decision, PM<sub>2.5</sub> precursors) "except where the Administrator determines that such sources do not contribute significantly to PM<sub>10</sub> levels which exceed the standard in the area." Rule 1325(b)(8) provides a definition of *Precursors* that only includes SO<sub>2</sub> and NO<sub>x</sub> and excludes VOC and ammonia emissions as precursors to PM<sub>2.5</sub>. The SCAQMD regulates VOC emissions pursuant to Regulation XIII, requiring federal Lowest Achievable Emission Rate (LAER) controls and offsets at emission thresholds significantly lower than required for a PM<sub>2.5</sub> precursor. Therefore we are proposing to find that Regulation XIII already satisfies the section 189(e) requirement for VOC and it is not necessary to include VOC as a precursor in Rule 1325. The SCAQMD requires LAER but not offsets for ammonia emissions in Regulations XIII. However, as allowed by CAA section 189(e), the SCAQMD has provided additional information in its staff report and other documents in our docket demonstrating major stationary sources of ammonia emissions do not contribute significantly to PM<sub>2.5</sub> levels that exceed the standard in the South Coast Air Basin. Please refer to our TSD for a detailed discussion of this issue.

With respect to substantive requirements found in CAA sections 173 and 189, and 40 CFR 51.165, we have evaluated SCAQMD Rule 1325 in accordance with the CAA and regulatory requirements that apply to NNSR permit programs under part D of

title I of the Act. We find that Rule 1325 satisfies the applicable requirements for a NNSR permit program and would strengthen the applicable SIP. We are therefore proposing a full approval of the submitted rule. Our TSD, which can be found in the docket for this rule, contains a more detailed evaluation and discussion of the approval criteria.

### **III. Proposed Action and Public Comment**

Pursuant to section 110(k)(3) of the CAA and for the reasons provided above, EPA is proposing to approve SCAQMD Rule 1325. For the reasons stated above and explained further in our TSD, we find that SCAQMD Rule 1325 satisfies the applicable CAA and regulatory requirements for a NNSR permit program under CAA section 110(a)(2)(C) and part D of title I of the Act. Rule 1325 strengthens the SIP by adding PM<sub>2.5</sub> permit major source requirements.

We will accept comments from the public on this proposed approval for the next 30 days.

### **IV. Incorporation by Reference**

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference SCAQMD Rule 1325 - Federal PM<sub>2.5</sub> New Source Review Program which is discussed in section I.A. of this preamble. The EPA has made, and will

continue to make, this document generally available electronically through [www.regulations.gov](http://www.regulations.gov) and/or in hard copy at the appropriate EPA office (see the ADDRESSES section of this preamble for more information).

#### **V. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);

- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not interfere with Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) because EPA lacks the discretionary authority to address environmental justice in this rulemaking.

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not

impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control,  
Incorporation by reference, Intergovernmental relations,  
Particulate Matter, Reporting and recordkeeping requirements.

**AUTHORITY:** 42 U.S.C. 7401 et seq.

Dated: February 5, 2015.

Jared Blumenfeld,  
Regional Administrator,  
Region IX.

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